

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 863 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JIVIBEN CHHOTALAL PATEL

Versus

STATE OF GUJARAT

Appearance:

MR PM BHATT for Petitioners
MR SP DAVE AGP for Respondent No. 1, 2 & 3
Respondent no.4 served.

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 07/02/97

ORAL JUDGEMENT

Upon hearing learned Counsel Mr. P.M.Bhatt for the petitioners and learned Govt. Counsel Mr.S.P.Dave, it appears that the present petition requires to be granted.

There was a sale effected on 8.9.1986. The necessary entry in this respect came to be posted in the revenue record, as Mutation Entry No.5525 on 8.9.1986. This entry came to be certified later on, under the orders dated October 18, 1986. The Prant Officer, Gandhinagar had taken the matter in revision in Fragmentation Case No. 371 of 1986 and had come to the conclusion that the transaction was illegal as it was violative of the provisions contained in the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. These orders dated 27th November 1994 came to be challenged before the Secretary (Appeals), Department of Revenue, State of Gujarat, unsuccessfully, by filing the appeal. This appeal came to be dismissed by the said authority under the orders dated June 29, 1996. The effect of these orders, therefore, would be that the above said sale was violative of the provisions contained under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

Now, when the present petition challenging the above said orders reaches final hearing before me, learned Counsel Mr.Bhatt for the petitioners points out that, in fact, all this exercise was a superfluous one because, under Mutation Entry No. 5524 dated 8.9.1986, the Revenue Officer concerned had noticed that, the land in question was a perennial irrigated land as irrigation facility was available from a tubewell situated in Survey No. 1118/8 belonging to one Maganbhai Patel. The village Revenue Officer, therefore, has said in this entry that the land cannot be said to be a fragment under the above said Act of 1947. This entry, later on, came to be certified under the orders dated October 18, 1986. Therefore, all what the petitioners wanted to have was given to him under the above said entry, namely, Mutation Entry No. 5524 dated 8.9.1986.

It appears that, this was not brought to the notice of the concerned authorities. They have also taken the view that, there was no evidence to warrant a conclusion that the land was a perennially irrigated one, but it appears that this has been done because the above said Mutation Entry No. 5524 never came to be presented before the authorities concerned.

It is, therefore, clear that, all what the petitioners wanted to have, has been given to him by the above said entry. Therefore, both the orders under challenge are hereby quashed and set aside by saying that the above said entry, namely, Mutation Entry No. 5524 dated 8.9.1986 shall remain in the revenue record as a

valid entry. The petition, therefore, stands allowed and the Rule is made absolute to the above said extent, with no order as to costs.
